

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Cynthia Lucas

Jury Trial Demanded

COMPLAINT

NAME OF PLAINTIFF(S)

**CV-15 4007**

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ JUL 06 2015 ★

Apple Food Service  
of New York, LLC

**FEUERSTEIN, J  
TOMLINSON, M**

LONG ISLAND OFFICE

NAME OF DEFENDANT(S)

This action is brought for discrimination in employment pursuant to (check only those that apply):

\_\_\_\_\_ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub. L. No. 102-166) (race, color, gender, religion, national origin).

*NOTE: In order to bring a suit in federal district court under Title VII, you must first obtain a right to sue letter from the Equal Employment Opportunity Commission.*

✓  
\_\_\_\_\_ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 - 634 (amended in 1984, 1990, and by the Age Discrimination in Employment Amendments of 1986, Pub. L. No. 92-592, the Civil Rights Act of 1991, Pub. L. No. 102-166).

*NOTE: In order to bring a suit in federal district court under the Age Discrimination in Employment Act, you must first file charges with the Equal Employment Opportunity Commission.*

✓  
\_\_\_\_\_ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 - 12117 (amended by the ADA Amendments Act of 2008, Pub. L. No. 110-325 and the Civil Rights Act of 1991, Pub. L. No. 102-166).

*NOTE: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a right to sue letter from the Equal Employment Opportunity Commission.*

Jurisdiction is specifically conferred upon this United States District Court by the  
aforementioned statutes, as well as 28 U.S.C. §§ 1331, 1343. Jurisdiction may also be appropriate  
under 42 U.S.C. §§ 1981, 1983 and 1985(3), as amended by the Civil Rights Act of 1991,  
Pub. L. No. 102-166, and any related claims under New York law.

1. Plaintiff resides at:

P.O. Box 89, Franklin Square  
Street Address

Nassau Ny 11010 516 512 2986  
County State Zip Code Telephone Number

2. Defendant(s) resides at, or its business is located at:

1710 Hempstead Turnpike  
Street Address

Nassau Elmont Ny 11003  
County City State Zip Code

3. The address at which I sought employment or was employed by the defendant(s) is:

1710 Hempstead Turnpike  
Street Address

Nassau Elmont Ny 11003  
County City State Zip Code

4. The discriminatory conduct of which I complain in this action includes

(check only those that apply).

- ☐ Failure to hire.
- ☒ Termination of my employment.
- ☐ Failure to promote.
- ☐ Failure to accommodate my disability.
- ☐ Unequal terms and conditions of my employment.
- ☐ Retaliation
- ☒ Other acts (specify): Assault

*NOTE: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.*

5. It is my best recollection that the alleged discriminatory acts occurred on:

June 5<sup>th</sup> 2014  
Date(s)

6. I believe that the defendant(s) (check one)

☒ is still committing these acts against me.

☐ is not still committing these acts against me.

7. Defendant(s) discriminated against me based on my:  
(check only those that apply and state the basis for discrimination, for example,  
what is your religion, if religious discrimination is alleged)

☐ race black ☐ color brown

☐ gender/sex Female ☐ religion Muslim

☐ national origin \_\_\_\_\_

☐ age 24 My date of birth is: 07-09-1990  
Date

☒ disability pregnancy

*NOTE: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.*

11. Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct (check one),

☐ 60 days or more have elapsed.  
☒ less than 60 days have elapsed.

12. The Equal Employment Opportunity Commission (check one):

☐ has not issued a Right to Sue letter.  
☒ has issued a Right to Sue letter, which I  
received on June 26 2015.  
Date

NOTE: Attach a copy of the Right to Sue Letter from the Equal Employment Opportunity Commission to this complaint.

WHEREFORE, plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, costs, and attorney's fees.

  
PLAINTIFF'S SIGNATURE

Dated: July 2<sup>nd</sup> 2015

P.O. Box 89  
Address  
Franklin Square NY 11010  
516 512 2980  
Phone Number

8. The facts of my case are as follows:

On June 5<sup>th</sup> 2014; I Cynthia LUCAS clocked in for my 2pm Shift as a hostess for Applebee's of Elmont. The shift ran smoothly up until the manager on Duty Pat E, called myself and Brittany L (other former employee) into the office and asked questions. After the manager asked all necessary questions I answered one of her indirect questions accordingly and then Brittany L had attacked me while ...

(Attach additional sheets as necessary)

(continued)

**Note:** As additional support for your claim, you may attach to this complaint a copy of the charge filed with the Equal Employment Opportunity Commission, the New York State Division of Human Rights, or the New York City Commission on Human Rights.

9. It is my best recollection that I filed a charge with the New York State Division of Human Rights or the New York City Commission on Human Rights regarding defendant's

alleged discriminatory conduct on: 11/26/2014  
Date

10. It is my best recollection that I filed a charge with the Equal Employment Opportunity

Commission regarding defendant's alleged discriminatory conduct on: 11/26/2014  
Date

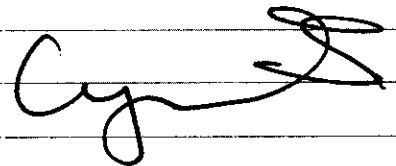
Only litigants alleging age discrimination must answer Question #11.

Date

7/2/15

I answered my manager. Brittnay had choked and ~~at~~ forced my head on the counter in the manager's office. I tried to be the bigger person to defend myself and my pregnancy so that I do not have a miscarriage at the place of employment. After waiting for the general manager to come in at 4pm to explain the situation I was asked to leave. I then went outside to call Human Services and spoke to Melissa (HR Manager) who told me that the tape will be assessed/investigated and that she would contact me back. I waited 2 weeks to find out I was suspended without pay and that the company decided to let me go after 2 years of employment on June 19<sup>th</sup> 2014. After I filed Unemployment the Department of Labor ruled in my favor after viewing the tape.

\* Please summon the tape and my letter/written statement that was mailed/faxed to Human Resources by Management of Applebee's.



## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**DISMISSAL AND NOTICE OF RIGHTS**

To: **Cynthia Lucas**  
**PO Box 89**  
**Franklin Square, NY 11010**

From: **New York District Office**  
**33 Whitehall Street**  
**5th Floor**  
**New York, NY 10004**

☐

On behalf of person(s) aggrieved whose identity is  
**CONFIDENTIAL (29 CFR §1601.7(a))**

EEOC Charge No.

EEOC Representative

Telephone No.

**16G-2015-00881**

**Holly M. Woodyard,**  
**State & Local Program Manager**

**(212) 336-3643****THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- ☐ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☒ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

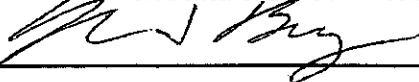
**- NOTICE OF SUIT RIGHTS -**

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



**Kevin J. Berry,**  
**District Director**

Enclosures(s)

June 24, 2015

(Date Mailed)

cc:

**ATTN: DIRECTOR OF HUMAN RESOURCES**  
**APPLE FOOD SERVICE OF NEW YORK, LLC**  
**7 Pearl Court**  
**Allendale, NJ 07401**

## **FACTS ABOUT FILING AN EMPLOYMENT DISCRIMINATION SUIT IN FEDERAL COURT IN NEW YORK STATE**

You have received a document which is the final determination or other final action of the Commission. This ends our handling of your charge. The Commission's action is effective upon receipt. Now, you must decide whether you want to file a private lawsuit in court. This fact sheet answers several commonly asked questions about filing a lawsuit.

### **WHERE SHOULD I FILE MY LAWSUIT?**

Federal District Courts have strict rules concerning where you may file a suit. You may file a lawsuit against the respondent (employer, union, or employment agency) named in your charge. The appropriate court is the district court which covers either the county where the respondent is located or the county where the alleged act of discrimination occurred. However you should contact the court directly if you have questions where to file your lawsuit. New York State has four federal districts:

- The United States District Court for the Southern District of New York is located at 500 Pearl Street in Manhattan. It covers the counties of Bronx, Dutchess, New York (Manhattan), Orange, Putnam, Rockland, Sullivan, and Westchester. (212) 805-0136 <http://www.nysd.uscourts.gov>
- The United States District Court for the Eastern District of New York is located at 225 Cadman Plaza in Brooklyn and covers the counties of Kings (Brooklyn), Nassau, Queens, Richmond (Staten Island), and Suffolk. (718) 613-2600 <http://www.nyed.uscourts.gov>
- The United States District Court for the Western District of New York is located at 68 Court Street in Buffalo. It covers the counties of Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates. (716) 551-4211 <http://www.nywd.uscourts.gov>
- The United States District Court for the Northern District of New York is located at 100 South Clinton Street in Syracuse and covers the counties of Albany, Broome, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Ulster, Warren, and Washington. This District Court's Pro Se Attorney has offices at 10 Broad Street in Utica New York. (315) 234-8500 <http://www.nynd.uscourts.gov>

### **WHEN MUST I FILE MY LAWSUIT?**

Your private lawsuit must be filed in U.S. District Court within 90 days of the date you receive the enclosed EEOC Notice of Right To Sue. Otherwise, you will have lost your right to sue.

(Over)



## **DO I NEED A LAWYER?**

No, you do not need a lawyer to file a private suit. You may file a complaint in federal court without a lawyer which is called a *Pro Se* complaint. Every district court has either a clerk or a staff attorney who can assist you in filing *Pro Se*. To find out how to file a *Pro Se* complaint, contact the clerk of the court having jurisdiction over your case who can advise you of the appropriate person to assist you and of the procedures to follow, which may vary from district to district.

You may, however, wish to retain a lawyer if you chose. Whether you retain a private attorney, or file *Pro Se*, you must file your suit in the appropriate court within 90 days of receiving this mailing.

## **WHAT IF I WANT A LAWYER BUT CAN'T AFFORD ONE?**

If you can't afford a lawyer, the U.S. District Court which has jurisdiction may assist you in obtaining a lawyer. You must file papers with the court requesting the appointment of counsel. You should consult with the office of the district court that assists *Pro Se* complainants for specific instructions on how to seek counsel. The appointment of counsel in any *Pro Se* complaint is always at the discretion of the court.

Generally, the U.S. District Court charges a \$350.00 filing fee to commence a lawsuit. However, the court may waive the filing fee if you cannot afford to pay it. You should ask the office of the District Court that assists *Pro Se* complainants for information concerning the necessary procedure to request that the filing fee be waived.

## **HOW CAN I FIND A LAWYER?**

These are several attorney referral services operated by bar or other attorney organizations which may be of assistance to you in finding a lawyer to assist you in ascertaining and asserting your legal rights:

American Bar Association  
(800) 285-2221  
[www.abanet.org](http://www.abanet.org)

New York City Bar  
Legal Referral Service  
(212) 626-7373

New York State Bar Association  
(800) 342-3441  
[www.nyba.org](http://www.nyba.org)

National Employment Lawyers Association  
Referral Service  
(212) 619-4430  
<http://www.nelaw.com/EN>

Other local Bar Associations in your area may also be of assistance.

## **HOW LONG WILL THE EEOC RETAIN MY CASE FILE?**

Generally, the Commission's rules call for your charge file to be destroyed after 2 years from the date of a determination, but time frames may vary. If you file a suit, and wish to request a copy of your investigative file, you or your attorney should make the request in writing as soon as possible. If you file suit, you or your attorney should also notify this office when the lawsuit is resolved.

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ JUL 06 2015 ★

LONG ISLAND OFFICE



ANDREW M. CUOMO  
GOVERNOR

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

CV - 15 4007

NEW YORK STATE DIVISION OF  
HUMAN RIGHTS on the Complaint of

CYNTHIA LUCAS,

Complainant,

v.

APPLE FOOD SERVICE OF NEW YORK, LLC,

Respondent.

DETERMINATION AND  
ORDER AFTER  
INVESTIGATION

Case No.  
10172587

FEUERSTEIN, J

TOMLINSON, M

Federal Charge No. 16GB500881

On 11/26/2014, Cynthia Lucas filed a verified complaint with the New York State Division of Human Rights ("Division") charging the above-named respondent with an unlawful discriminatory practice relating to employment because of sex, disability in violation of N.Y. Exec. Law, art. 15 (Human Rights Law).

After investigation, and following opportunity for review of related information and evidence by the named parties, the Division has determined that there is NO PROBABLE CAUSE to believe that the respondent has engaged in or is engaging in the unlawful discriminatory practice complained of. This determination is based on the following:

The evidence gathered during the course of the investigation of the instant complaint is not sufficient to support the complainant's allegations of unlawful discrimination in relation to employment on the basis of disability and sex.

The complainant, who is female and who had been pregnant during the course of her employ, began her employment for the respondent on April 10, 2012, as a Hostess.

In March 2014 the complainant advised the respondent that she was pregnant. Complainant continued to work through her pregnancy.

On June 5, 2014, Ms. Brittany L., another Hostess, spoke to the complainant in a manner which the complainant deemed to be disrespectful. The two women then spoke to Pat "Doe", Manager, regarding this incident. During the course of this discussion a physical altercation

transpired which resulted in both women being directed to leave the premises immediately. Both women were suspended pending investigation.

The record shows that both women, complainant who was pregnant and her colleague who was not pregnant, had their employment terminated for their participation in this altercation following an investigation into the June 5, 2014 event.

While the complainant asserts that she was a victim and not an aggressor in this altercation, no evidence has been presented which would suggest that the complainant's pregnancy, rather than her participation in the matter, was a determining factor in the decision to terminate her employment.

The complaint is therefore ordered dismissed and the file is closed.


PLEASE TAKE NOTICE that any party to this proceeding may appeal this Determination to the New York State Supreme Court in the County wherein the alleged unlawful discriminatory practice took place by filing directly with such court a Notice of Petition and Petition within sixty (60) days after service of this Determination. A copy of this Notice and Petition must also be served on all parties including General Counsel, ~~State Division of Human Rights, One Roman Plaza, 18th Floor, New York, New York 10004~~. DO NOT FILE THE ORIGINAL NOTICE AND PETITION WITH THE STATE DIVISION OF HUMAN RIGHTS.

Your charge was also filed under Title VII of the Civil Rights Act of 1964. Your charge was also filed under the Americans with Disabilities Act (ADA). Enforcement of the aforementioned law(s) is the responsibility of the U.S. Equal Employment Opportunity Commission (EEOC). You have the right to request a review by EEOC of this action. To secure review, you must request it in writing, within 15 days of your receipt of this letter, by writing to ~~EEOC, New York District Office, 33 Whitehall Street, 9th Floor, New York, New York 10004~~. Otherwise, EEOC will generally adopt our action in your case.

Dated: MAY 26 2015  
Hempstead, New York

STATE DIVISION OF HUMAN RIGHTS

By:



Leon C. Dimaya  
Acting Director

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IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ JUL 06 2015 ★  
LONG ISLAND OFFICE

United States District Court  
100 Federal Plaza  
Central Islip, NY 11722

John Lucas  
Box 89  
Klin Square NY 11010